

L A W O F F I C E S
2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: (202) 828-2236
A5691.0584

April 16, 2004

**NOTICE OF EX PARTE
COMMUNICATION**

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

**Re: Pay Telephone Reclassification and Compensation Provisions of the
Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Ms. Dortch:

In response to a request from staff, we submit the following information on behalf of the American Public Communications Council ("APCC") to further explain the clarification requested in APCC's petition for reconsideration and clarification, filed December 8, 2003, concerning the compensation payment obligations of local exchange carriers ("LECs").

Payphone service providers ("PSPs") have reported that some LECs, *e.g.*, SBC, compensate PSPs for dial-around calls completed by the LEC by applying credits to the PSP's bill for local exchange service. This method ensures that a PSP is compensated if the PSP's payphones receive local exchange service from the completing LEC, but does not provide compensation to a PSP whose payphones receive local exchange service from a different LEC – *e.g.*, because the payphones are located outside the completing LEC's service territory. In order to make payment to such PSPs, the LEC must utilize the payment methods (such as payment through a compensation clearinghouse) typically used by non-LEC interexchange carriers ("IXCs").

If a completing LEC relies exclusively on the bill-credit method of compensation, the result is that PSPs with payphones outside the completing LEC's service territory do not receive any compensation for calls originating from their payphones for which the LEC is responsible to pay compensation. Moreover, this can occur whether the call is local, or interexchange in nature.

The Commission's compensation rule, as amended in the October 3, 2003 Report and Order, FCC 03-235, provides that a LEC must pay compensation whenever it "completes a local, coinless access code or subscriber toll-free payphone call." *See* 47 CFR § 64.1300(a), as amended. The compensation obligation does not depend on whether or not the completing LEC is providing local service to the payphone from

1177 Avenue of the Americas • 41st Floor • New York, New York 10036-2714
Tel (212) 835-1400 • Fax (212) 997-9880

which the call originates. Similarly, the compensation rule requires all long distance carriers – including any LEC that provides long distance as well as local service – to pay compensation when the long distance carrier completes a long-distance “coinless access code or subscriber toll-free payphone call,” without regard to whether the carrier provides local service to the payphone from which the call originates. *Id.*

Therefore, we requested the Commission to clarify that, unless LECs and PSPs agree otherwise, (1) LECs are required to pay compensation when they complete local toll-free or access code calls originating from payphones, whether the payphones are located inside or outside the LEC’s local service territory and whether or not the LEC is providing local service to the payphone; and (2) where a LEC is providing interexchange service, the LEC is required to pay compensation when it completes interexchange toll-free or access code calls originating from payphones, whether the payphones are located inside or outside the LEC’s local service territory and whether or not the LEC is providing local service to the payphone.

The staff requested us to provide illustrations of situations in which a LEC would be liable to pay compensation for a local or long distance call even though the LEC does not provide local exchange service to the payphone from which the call originates.

As one example, a payphone could be served by a LEC (LEC A) whose service territory is adjacent to another LEC’s (LEC B’s) service territory. *See* Figure 1. A caller at a payphone in LEC A’s territory wishes to place a coinless local call. The caller has a calling card issued by LEC B. The caller dials the access code for LEC B’s calling card platform. LEC B handles the completion of the call from its platform¹ and is therefore the “completing carrier” for the call, even though LEC B is not the LEC serving the originating payphone.

Another example would follow the same scenario as above, except that LEC B offers interexchange service as well as local service, and a subscriber to LEC B’s interexchange service is using a payphone in LEC A’s service territory to make a long distance call.² As in the first example, the caller has a calling card from LEC B and dials the access code for LEC B’s calling card platform. LEC B handles the completion of the interexchange call from its calling card platform and is therefore the completing carrier for the call, even though LEC B is not the LEC serving the originating payphone. *See* Figure 2.

¹ In Figure 1, the dotted-line arrows connecting the platform to two different telephones are intended to illustrate that the called party for this local call could be in the service territory of either LEC A or LEC B. In either case, LEC B would be the completing carrier.

² This could be either an intraLATA or interLATA interexchange call.

As a final example, a caller at the payphone in LEC A's territory wishes to place a subscriber toll-free call to a business that utilizes LEC B's interexchange service to handle calls made to the business's toll-free number. LEC A consults the toll-free number data base and determines that LEC B is the interexchange carrier to whom the toll-free call should be routed. LEC B is thus the completing carrier for the call, even though LEC B is not the LEC serving the originating payphone. *See Figure 3.*

APCC requests the Commission to clarify that, in order to ensure that they are fulfilling their compensation obligations in these types of situations, LECs must be prepared to utilize compensation payment methods other than bill credits, since they will not be able to use local service bill credits to compensate PSPs who are not their local exchange service customers.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich". The signature is fluid and cursive, with the first name "Robert" and last name "Aldrich" clearly distinguishable.

Albert H. Kramer
Robert F. Aldrich

Enclosure
cc: Bill Dever
Darryl Cooper
Denise Coca

LOCAL CALLING CARD CALL COMPLETED BY LEC B

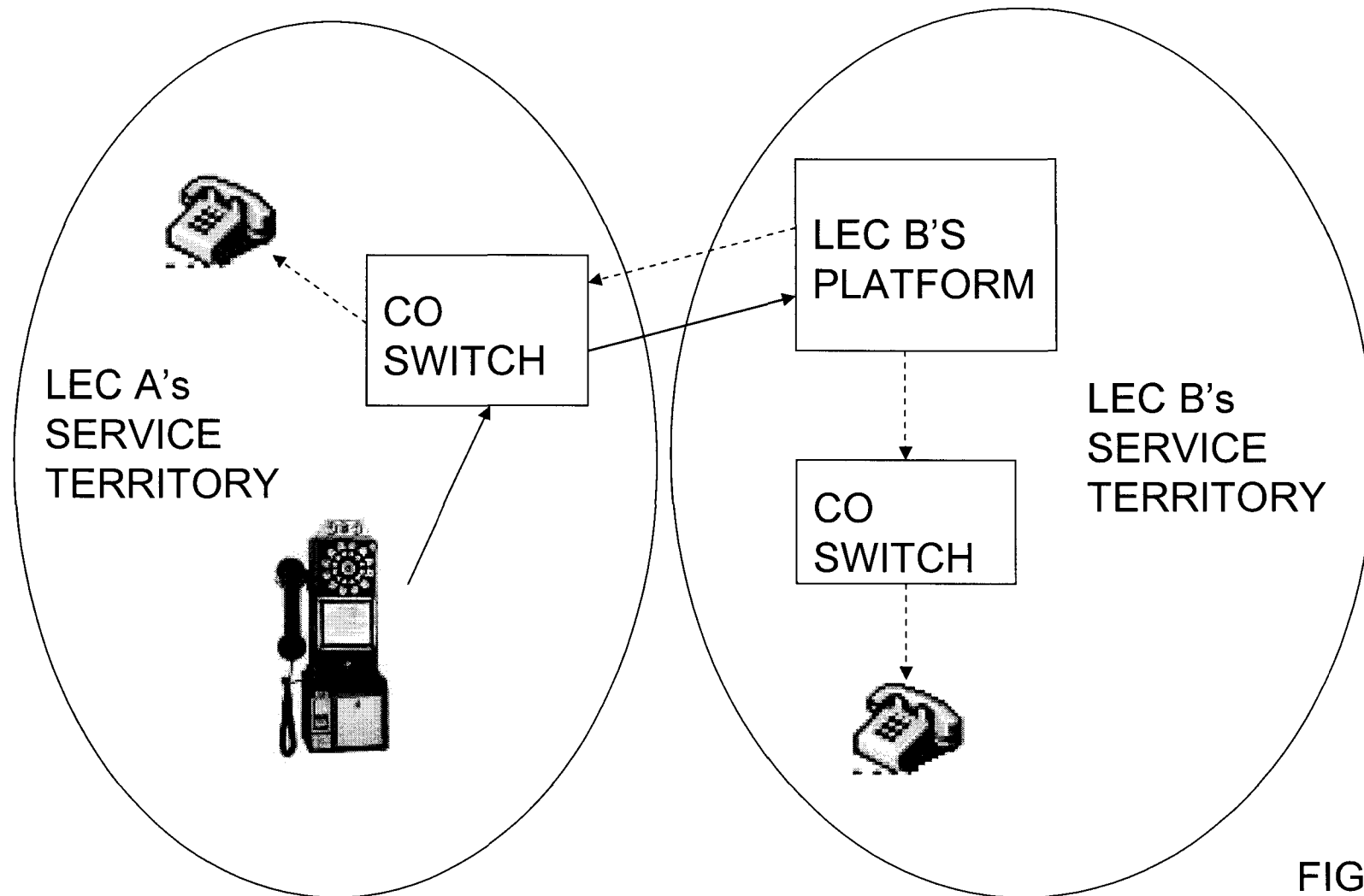


FIGURE 1

INTEREXCHANGE CALLING CARD CALL COMPLETED BY LEC B

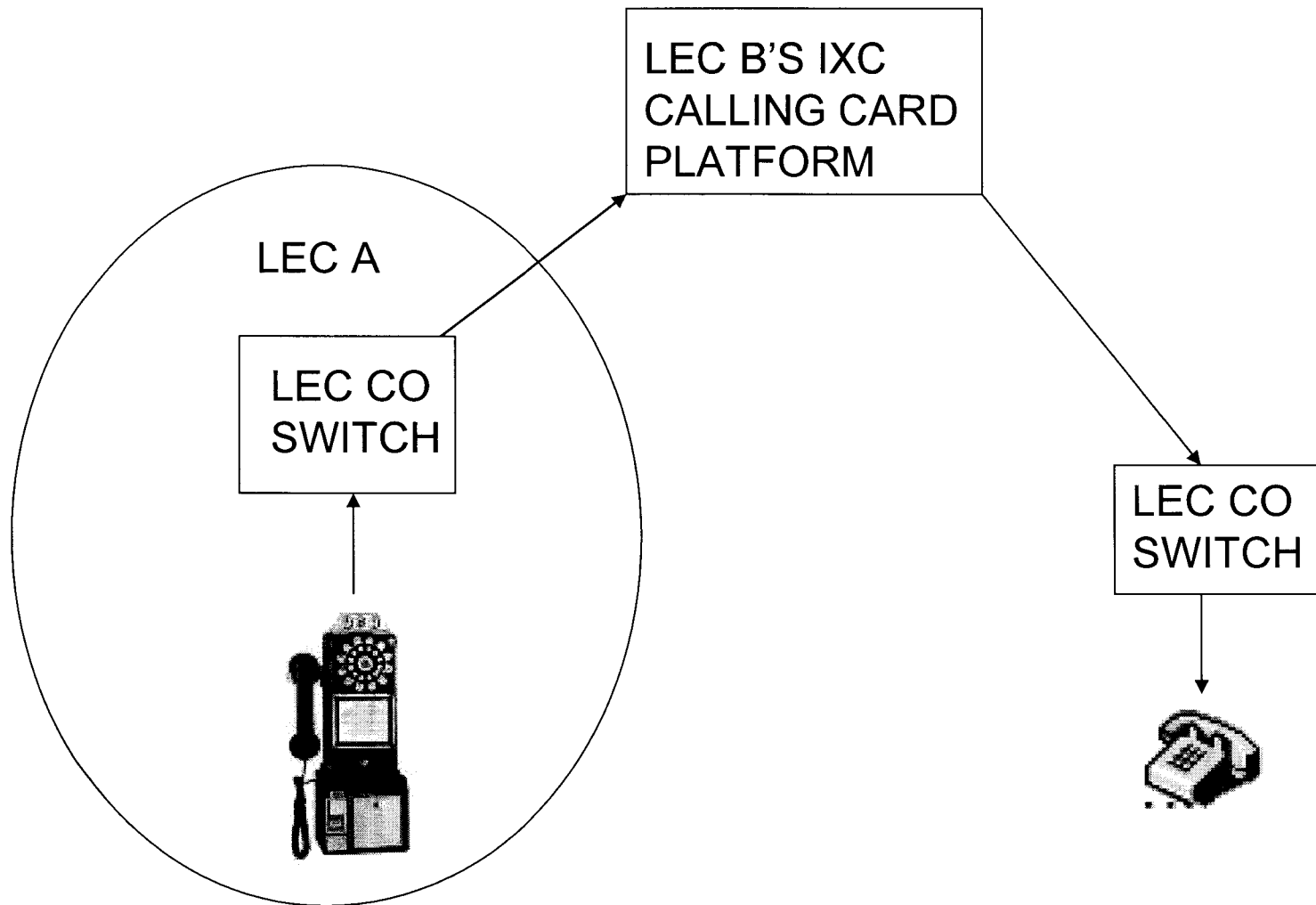


FIGURE 2

INTEREXCHANGE SUBSCRIBER TOLL-FREE CALL COMPLETED BY LEC B

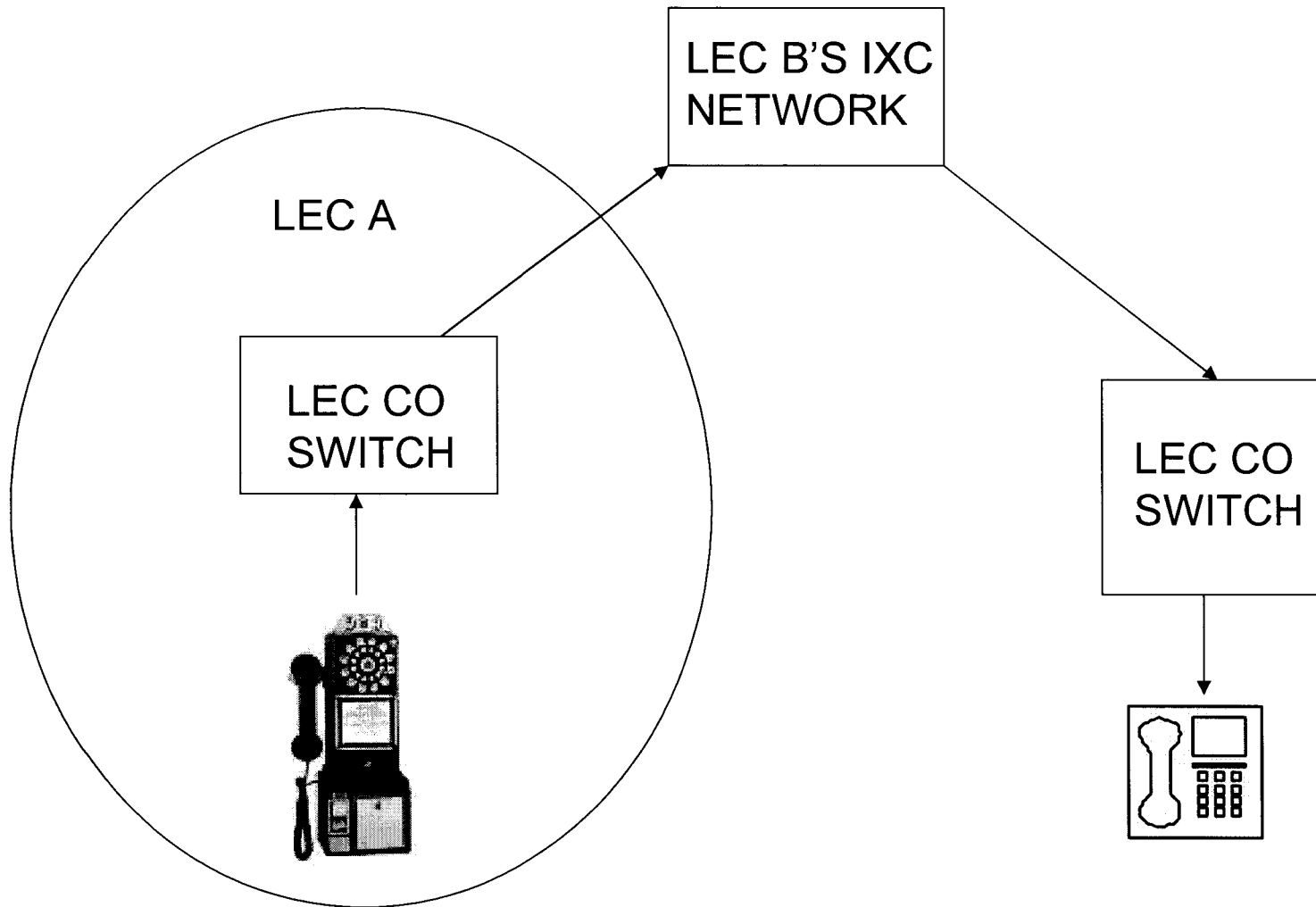


FIGURE 3